

Steven F. Alder (No. 0033)  
John Robinson Jr. (No. 15247)  
Assistant Attorneys General  
Sean D. Reyes (No. 7969)  
Utah Attorney General  
1594 W. North Temple, Suite 300  
Salt Lake City, Utah 84116  
Tel: (801) 538-7227

*Attorneys for Utah Division of Oil, Gas and Mining*

**FILED**

**JUL 10 2015**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

BEFORE THE UTAH BOARD OF OIL, GAS AND MINING

*In the matter of:* reclamation at the Elite  
Rock-West mine, permit no. S/049/050,  
operated by Wasatch Mountain  
Excavating, located southwest of Elberta  
in the southwestern Utah County, Utah

NOTICE OF AGENCY ACTION

Docket No. 2015-023  
Cause No. S/049/0050

The Utah Division of Oil, Gas and Mining submits this Notice of Agency Action for consideration by the Utah Board of Oil, Gas and Mining.

## **Introduction**

This Notice of Agency Action addresses violations of the Mined Land Reclamation Act by Respondent Wasatch Mountain Excavating. Brett Bryson is the registered agent and Wasatch Mountain Excavating is the operator of record of the Elite Rock-West mine, permit no. S/049/050. The mine is located in southwestern Utah County, specifically the northwest  $\frac{1}{4}$  of the northwest  $\frac{1}{4}$  of section 12, Township 11 South, Range 2 West, Salt Lake Meridian.

The Elite Rock-West mine was originally permitted in 2005 as a small mine site for rock, sand, and gravel mining operations. The site has not been operational, or in compliance with its permit, since 2007. At that time, Mr. Bryson informed the Division that Wasatch Mountain Excavating intended to cease mining operations and commence reclamation. Reclamation commenced but was never completed despite numerous good-faith extensions granted by the Division.

In 2014, the Division withdrew the Notice of Intention for the Elite Rock-West site because of outstanding fees, outstanding fines, and ongoing reclamation problems. Through this action, the Division moves the Board of Oil, Gas and Mining to: (1) order forfeit the \$10,000 reclamation surety currently in place; (2) authorize the Division to reclaim the mine site with the forfeited money; and (3) request that the Attorney General and the Division seek the outstanding civil penalties and fees in a judicial action.

## **Legal Background**

The Utah Mined Land Reclamation Act (the Act), Utah Code § 40-8-1 to -23, is designed to balance the necessity of extracting minerals required by society against the interests of safety, welfare, and subsequent land use. Its express purpose mandates reclamation of lands affected by mining. *Id.* § 40-8-3. To that end, the Act divides the mining world into two camps: large mines and small mines. Small mines must be five or fewer surface acres and face the lesser

regulatory burden of Utah Administrative Code Rule 647-3. Large mines, on the other hand, are subject to Utah Administrative Code Rule 647-4, which imposes more extensive planning, bonding, and permitting requirements.

***Reclamation standards.*** The Act requires mine operators for both large and small mines to conduct reclamation and bear any costs and expenses thereof. Utah Code § 40-8-12.5. Utah Administrative Code Rule 647-3-109 details the reclamation requirements for small mine sites, while 647-4-11 mirrors those requirements for large mines. In general, both reclamation Rules aim to protect public safety and welfare, address environmental concerns, and restore the land to ensure successful future use. To this end, the Rules outline specific conditions that must be met before a site is considered reclaimed that all mine operators agree to meet when they undertake a mining operation in Utah.

***Reclamation surety.*** One of the most important reclamation rules is the surety requirement in section 14 of the Act. Utah Code § 40-8-14. Section 14 requires two things. First, the operator must post a surety in an amount calculated by the Division. The surety can be held in the form of cash, a bond, or a similar equivalent. Second, the operator must enter into a reclamation contract with the Division. The two work in tandem to ensure either that the mine site is properly reclaimed by the operator after mining activity ceases, or in the alternative that money is available for the Division to complete the reclamation itself. Partial release of the surety is allowed upon partial completion of reclamation as the Division sees fit.

***Failure to reclaim.*** Under Rules 647-3-112 and 647-4-114 mine operators for both small and large mines are liable for costs when they fail or refuse to conduct reclamation. The Rule requires notice and hearing and confers two powers on the Board that pertain to this case. First, the Board may authorize forfeiture of the surety. 40-8-14-6(a). Second, the Board may order that reclamation be conducted by the Division. Utah Admin. Code R. 647-3-112.1.

## **Jurisdiction and Procedure**

1. The Division brings this matter to the Board under the Utah Mined Land Reclamation Act, Utah Code §§ 40-8-1 to -23. The Act gives the Board and Division “jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter.” *Id.* § 40-8-5(1)(a). The Act also gives the Board the power and the duty to hold hearings, issue orders based on those hearings, and “do all other things and take such other actions within the purposes of this act as may be necessary to enforce its provisions.” *Id.* § 40-8-6(2), (4).
2. Pursuant to the Rules of the Board, unless otherwise ordered, this matter will be heard at the regularly scheduled Board Hearing on August 26, 2015 at 9:00 A.M. in the auditorium of the Department of Natural Resources building at 1594 West North Temple, Salt Lake City, Utah.
3. This proceeding will be conducted formally according to the provisions of the Board’s administrative rules found in Utah Administrative Code Rule 641 and sections 63G-4-204 through 63G-4-209 of the Utah Code.
4. This proceeding may affect property and legal interests of the operators, the mineral owners, the surface landowners, and other named individuals associated with the mine. Each are “respondents” as defined under Utah Administrative Code Rule 641-100-200.
5. To avoid the possibility of a default, respondents must file and serve a written response within twenty (20) days of the service date of this Notice of Agency Action. Utah Admin. Code R. 641-104-141.
6. Under Utah Administrative Code Rules 641-104-131.600 and 641-104-151, a party who fails to file a response or attend or participate in the hearing may be held in default.

## **Allegations**

7. In April 2005, Elite Rock Company, operated by Andrew Shick, filed a Notice of Intention to Commence Small Mining Operations (an NOI) at the Elite Rock-West mine which is located at roughly 19,400 South Tunnel Road in the southwest corner of Utah County, Utah. Specifically, the mine is located in the northwest  $\frac{1}{4}$  of the northwest  $\frac{1}{4}$  of section 12, Township 11 South, Range 2 West, Salt Lake Meridian.
8. When the NOI was filed, Mr. Bill Beifuss purportedly owned the surface and mineral estates at the mine site. On information and belief, Robert Aurora Sky, LLC, managed by Mr. Matthew R. Shadle, now owns the surface and mineral estate.
9. The Division conditionally accepted Mr. Shick's NOI, pending a completed reclamation contract, and assigned the Elite Rock-West mine permit no. S/049/050.
10. In 2006, Wasatch Mountain Excavating ("Wasatch Mountain") filed an application to transfer the Elite Rock-West mine from Elite Rock Company, LLC. Wasatch Mountain secured the necessary reclamation surety and the Division approved the transfer. Wasatch Mountain is the current operator for the Elite Rock-West site. Brett Bryson is the registered agent for Wasatch Mountain.
11. In November 2007, the Division issued Mr. Bryson a Cessation Order (MC-2007-01-16). The Cessation Order assessed a fine of \$1760 for disturbed land in excess of the permitted area.
12. Specifically, inspectors found about nine acres disturbed at the site, four acres in excess of the approved area. The Cessation Order required Wasatch Mountain to either reclaim the site or provide additional surety along with a NOI for Large Mining Operations.

13. In December 2007, Mr. Bryson informed the Division of his intent to cease all mining operations and begin reclamation at the Elite Rock-West site.
14. The Division agreed to give Wasatch Mountain more time to complete reclamation in exchange for an additional \$10,000 in reclamation surety.
15. When the Division inspected the site in April 2008, reclamation work had just commenced and the operator requested a three-week extension to complete reclamation. When the Division returned in May, less than two acres of reclamation work were completed.
16. Eventually, the operator completed more reclamation and the Division released one of the two \$10,000 bonds in place (leaving \$10,000). However, Wasatch Mountain never completed the remaining reclamation.
17. Forfeiting the remaining surety will allow the Division to contract for the remaining reclamation work.
18. Wasatch Mountain never paid, and still owes, \$1760 in civil penalties and \$750 in back permit fees for the years 2007, 2009, 2010, 2012, 2013.
19. In sum, the Division has made many efforts over the years to accommodate reclamation at the site without formal forfeiture proceedings, but its attempts remain unsuccessful. Thus, Wasatch Mountain has failed or refused to reclaim as required by Utah law, and this administrative action is necessary to ensure public safety, protect Utah's environment, and provide for beneficial post-mine land use at the Elite Rock-West site.

## Request for Action

Based on practice and rule, the Division moves the Board to take the following three actions:

- A. Order forfeiture of the \$10,000 surety in place for reclamation of the Elite Rock-West mine under Utah Code § 40-8-14-6(a)-(b) and Utah Administrative Code Rule 647-3-112.
- B. Order the Division to reclaim the Elite Rock-West mine using the forfeited funds under Utah Code § 40-8-12.5 and Utah Administrative Code Rule 647-3-112.
- C. Request that the Attorney General and the Division seek all outstanding civil penalties and fees in a judicial action under Utah Code § 40-8-9.1(4).
- D. Grant any other just and equitable relief in these circumstances.

Respectfully submitted on the 10<sup>th</sup> day of July, 2015.

UTAH DIVISION OF OIL, GAS AND MINING

  
\_\_\_\_\_  
For Paul Baker  
Minerals Program Manager

UTAH OFFICE OF THE ATTORNEY GENERAL

  
\_\_\_\_\_  
Steven F. Alder  
John Robinson Jr.  
Assistant Attorneys General

Tel: (801) 538-7227

Email: [stevealder@utah.gov](mailto:stevealder@utah.gov)  
[jrobinson@utah.gov](mailto:jrobinson@utah.gov)

*Attorneys for the Division of Oil, Gas and Mining*

*Addresses Required by Rule:*

Utah Board of Oil, Gas and Mining:  
Ruland J Gill, Jr.  
Chairman of the Board  
Board of Oil, Gas and Mining  
1594 West North Temple, Suite 3710  
Salt Lake City, Utah 84114-5610  
(801) 538-7200

Utah Division of Oil, Gas and Mining:  
John R. Baza  
Division Director  
Division of Oil, Gas and Mining  
1594 West North Temple, Suite 3710  
Salt Lake City, Utah 84114-5610  
(801) 538-7200



## Certificate of Service

I certify that I caused to be served the above **Notice of Agency Action** to the following parties on 10<sup>th</sup> July, 2015:

*By certified mail:*

Wasatch Mountain Excavating, Inc.  
Suzanne Bryson, Registered Agent  
905 N. Main Street, Suite C-3  
North Salt Lake City, UT 84054

*By email:*

James R. Blakesley  
James R. Blakesley, PLLC  
2595 East 3300 South  
Salt Lake City, UT 84109  
*Email:* jim@blakesleylaw.com

*Attorney for Matthew R Shadle &  
Robert Aurora Sky, LLC*

*By mail:*

Robert Aurora Sky, LLC  
Elisha Ann Jensen, Registered Agent  
196 East 10600 South  
Sandy, UT 84070

*By mail:*

David Shawcroft  
Civil Division Chief  
Utah County Attorney's Office  
100 E. Center Street  
Provo, UT 84606

Denise Fashender